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June 23, 2003

Ms. Mary Cottrell, Secretary  
Department of Telecommunications and Energy  
One South Station, 2<sup>nd</sup> Floor  
Boston, Massachusetts 02110

**RE: Investigation By The Department Of Telecommunications And  
Energy To Establish A Surcharge To Recover Prudently Incurred  
Costs Associated With The Provision Of Wireline Enhanced 911  
Services, Relay Services For TDD/TTY Users, Communications  
Equipment Distribution For People With Disabilities, And Amplified  
Handsets At Pay Telephones, D.T.E. 03-63**

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Dear Ms. Cottrell:

Pursuant to the *Notice Of Investigation, Public Hearing And Intervention;  
Request For Data And Surcharge Proposals; And Request For Comments By The  
Department Of Telecommunications And Energy* ("Notice"), issued May 29, 2003 in the  
above-captioned proceeding, I submit this letter on behalf of Comcast Phone of  
Massachusetts, Inc. f/k/a AT&T Broadband Phone of Massachusetts, LLC ("Comcast  
Phone") in lieu of formal comments.

Comcast Phone's remarks below relate to the Department's opening of an  
investigation to establish a surcharge to recover prudently incurred costs associated with  
the provision of wireline enhanced 911 service, among other things.<sup>1/</sup> This surcharge  
will be established pursuant to Chapter 239 of the Acts of 2002, and G.L. c. 159, § 12(d),  
and proposed regulations 220 C.M.R. §§ 16.00 *et seq.* promulgated in D.T.E. 03-24, and  
will appear on retail customers' telephone bills.

The Department has divided this proceeding into two phases. The first phase,  
which is the focus of this letter, is designed to set an interim E911 surcharge, which will  
be based on estimated data from the State Emergency Telecommunications Board  
("SETB") and Verizon New England Inc. d/b/a Verizon Massachusetts ("Verizon"). The  
Department has specifically requested that Verizon and SETB provide the following data:

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<sup>1/</sup> D.T.E. 03-63, *Notice of Investigation, Public Hearing and Intervention;  
Request for Data and Surcharge Proposals; and Request for Comments by the  
Department of Telecommunications and Energy*, at 1 (May 29, 2003) ("Notice").

(1) estimated program costs; (2) estimated line count data; and (3) the estimated total deficit to be recovered through the surcharge. Verizon and the SETB submitted their data to the Department on June 13, 2003, proposing an interim surcharge of \$0.85.<sup>2/</sup> The second phase of the proceeding will establish a permanent E911 surcharge.

Comcast Phone's remarks below concentrate in large part on the estimated total deficit figure provided by Verizon. Verizon states in its *Interim Surcharge Proposal* that "[s]ince 1995, the expenses associated with the provision of E911 and disability access programs exceeded the revenues received from Verizon MA's residence directory assistance charges," creating a deficit within the previous funding mechanism.<sup>3/</sup> Verizon's *Interim Surcharge Proposal*, however, fails to provide detailed data to justify the \$43.1 million deficit figure claimed therein.

Given a deficit figure of such magnitude, it is not enough simply to take Verizon at its word. To ensure that both Massachusetts consumers and competitive local exchange carriers ("CLECs") assessed E911 charges are afforded adequate protection, the Department should include a discovery phase in this proceeding. Although an audit was conducted in 1998 with respect to Verizon's accounting requirements in reporting expenses and directory assistance revenues,<sup>4/</sup> the audit did not establish the actual amount of the deficit or the revenues from sources other than directory assistance charges. Discovery would help ensure that appropriate data is used to determine the deficit estimate.

In particular, it appears that Verizon's *Interim Surcharge Proposal* does not reflect revenue that Verizon is seeking to generate from CLECs in the form of E911 "Infrastructure Charges." As the Department is aware, Verizon recently began back billing many CLECs for such charges. Assuming for argument's sake that Verizon has the right to back bill these charges, Verizon does not explain in its *Interim Surcharge Proposal* whether any revenue to be collected from those charges was factored into a reduction of the E911 deficit figure set forth in the proposal. Clearly, Verizon should be required to explain whether revenues generated from E911 "Infrastructure Charges" will be used to offset the E911 deficit.

In late May 2003, Telecommunications Division Director Michael Isenberg requested from Verizon a "comprehensive, detailed discussion of this back billing incident" and a "legal analysis of Verizon's authority under its tariffs, interconnection agreements and Massachusetts law to retroactively bill CLECs for these charges," but

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<sup>2/</sup> See *Interim Surcharge Proposal* submitted by Verizon Massachusetts and the Statewide Emergency Telecommunications Board (June 13, 2003) ("*Interim Surcharge Proposal*").

<sup>3/</sup> *Interim Surcharge Proposal* at 3.

<sup>4/</sup> See D.T.E. 03-24, Reply Comments of Verizon Massachusetts (May 9, 2003).

Verizon's response to date has been scant.<sup>5/</sup> Verizon, in responding to Mr. Isenberg's request, stated that the E911 "Infrastructure Charges," had they been "timely billed," would have been used to offset E911 expenses. Further, Verizon committed to "track the back-billing amounts and apply the amount collected to offset the E911 expenses already incurred." This, Verizon noted, "would lead to a reduction in the E911 deficit . . ."<sup>6/</sup> However, as pointed out above, the E911 deficit set forth in the *Interim Surcharge Proposal* does not reflect the amounts for which Verizon is back billing CLECs, and Verizon's proposal in turn ignores the company's earlier commitment to apply those amounts to a reduction of the E911 deficit.

The Department must not permit Verizon to burden Massachusetts consumers with an excessive E911 surcharge based on an overestimate of the E911 deficit – even if a majority of consumers could later receive the benefit of a true-up to the surcharge. True-ups in the E911 surcharge will result in unnecessary billing changes, the potential for errors or omissions on the part of carriers billing the surcharge, and consumer confusion. To start this proceeding on the right foot, Verizon must be required to resolve all outstanding E911 surcharge issues and to adjust the deficit accordingly before subjecting consumers to the new E911 surcharge.

The Department must also examine the Verizon's authority to bill CLECs as far back as September 2000 for the E911 "Infrastructure Charges." Verizon should be required to provide an explanation of the reasons for its failure to "discover" this situation until March 2003, a detailed accounting of the expenses embedded in the \$0.61 per record charge, the parties responsible to pay the E911 "Infrastructure Charges", and an explanation of whether Verizon intends to continue to assess the E911 "Infrastructure Charges" once the new funding mechanism is in place. Although the Verizon Letter purports that the E911 "Infrastructure Charges" are based on Tariff No. 17, interconnection agreements may contain rates, terms, and conditions for E911 facilities and services that, consistent with Department policy, take precedence over the tariff.

The Department must also not lose sight of the fact that local exchange competition in the Commonwealth will be harmed if Verizon is permitted to back bill CLECs for the E911 "Infrastructure Charges." CLECs rely on the receipt of reasonably accurate and complete Verizon invoices in making the determination as to whether such amounts should be passed on to their subscribers. Verizon's failure to bill CLECs for the E911 "Infrastructure Charges" over a period of many months and years means that those service providers will be unable to reasonably pass on those charges to their subscribers. After all, if a CLEC burdens its subscribers retroactively with a significant multi-month

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<sup>5/</sup> See Letter from Michael Isenberg, Director, Telecommunications Division, Department of Telecommunications and Energy, to John L. Conroy, Vice President, Verizon (May 29, 2003).

<sup>6/</sup> Letter from Verizon to Michael Isenberg, Director, Telecommunications Division, Department of Telecommunications and Energy 1 (June 11, 2003) (the "Verizon Letter").

Ms. Mary Cottrell, Secretary

Page - 4 -

June 23, 2003

or multi-year charge, the CLEC risks alienating and losing subscribers to those service providers who are not encumbered by the same charges (i.e., to Verizon). Further, CLECs, as a result of normal subscriber turnover in the preceding months and years, will be unable to recoup the E911 "Infrastructure Charges" from those subscribers who have been lost to such turnover, thereby leaving CLECs with no choice but to absorb a portion of the E911 "Infrastructure Charges." As noted above, CLECs rely on Verizon's obligation to invoice them in an accurate and complete manner and, for the above-mentioned reasons, such CLECs will suffer detriment if Verizon is now permitted to back bill them for a period of months or years. Accordingly, the doctrine of estoppel applies to Verizon's authority to bill CLECs for the E911 "Infrastructure Charges." Indeed, the FCC has found that a delay of much less than 24 months between the rendering of service and the receipt of an initial bill for such service may be an unjust and unreasonable practice for purposes of Section 201(b) of the Communications Act. *See American Networks, Inc.*, 4 FCC Rcd 550, ¶ 19 (1989)

Because Verizon has not adequately addressed issues regarding the outstanding E911 surcharges and deficit figure, the Department should require Verizon to submit a detailed plan on how it will resolve these issues upon resolution of the outstanding CLEC E911 charges. Verizon should indicate whether a CLEC would be able to true up if it pays the bill and the new surcharge is for a higher or lesser amount.

Finally, Verizon stated in its response to the DTE's May 29, 2003 letter that it based the back-bills on review of "all CLEC records." This does not specify on what records to establish to what elements of CLEC services or facilities Verizon has applied the rates specified in Tariff No. 17.

Addressing these charges will help insure the accuracy of the E911 surcharge and avoid confusion in the collection of the E911 surcharge.

Respectfully submitted,

Cameron F. Kerry

cc: Joan Foster Evans (4 copies)  
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